

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

NATALYA PRACH, IVAN KRIGER,
ANDREY SAMOLOVOV, ANATOLIY
TSIRIBKO AND JOSEPH
ESPOSITO, as TRUSTEE FOR
IVAN KRIGER,

Plaintiffs,

vs.

BOWEN PROPERTY MANAGEMENT,
L.P., JOHN BALLAS, and KERRY
LEMONS,

Defendants.

NO. CV-03-0250-EFS

**ORDER DENYING PLAINTIFFS' MOTION
TO FILE LATE OBJECTION AND
GRANTING DEFENDANTS BOWEN AND
BALLAS' MOTION FOR JUDGMENT OF
DISMISSAL FOLLOWING RETURN OF
MANDATE AND MOTION FOR ORDER
DIRECTING CLERK TO RELEASE CASH
BOND**

Before the Court, without oral argument, are Defendants Bowen Property Management, Inc. ("Bowen") and John Ballas' Motion for Judgment of Dismissal Following Return of Mandate (Ct. Rec. [656](#)) and Motion for Order Directing Clerk to Release Cash Bond Following Return of Mandate (Ct. Rec. [654](#)). No timely response was filed to these motions; however, on March 6, 2009, Plaintiffs sought leave to file a late objection (Ct. Rec. [659](#)). After reviewing the submitted material and relevant authority, the Court is fully informed and denies Plaintiffs' motion and grants Defendants' motions.

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1 **A. Background**

2 Jury verdicts were entered in Plaintiffs' favor, including
3 Plaintiffs Kriger¹ and Samolovov, on March 23, 2007. (Ct. Recs. [482](#) &
4 [484](#).) Defendants Bowen and Ballas appealed these verdicts, as well as
5 an award of attorneys' fees and costs in Plaintiffs' favor. Defendant
6 Kerrey Lemons did not appeal the jury verdicts.² On review, the Ninth
7 Circuit determined that Defendants Bowen and Ballas are entitled to
8 judgment as a matter of law because Plaintiffs Kriger and Samolovov's
9 damages were not caused by Bowen's and Ballas's conduct. (Ct. Rec.
10 [650](#).)

11 **B. Plaintiffs' Motion to File Late Objection to Motion for Judgment of**
12 **Dismissal**

13 Plaintiffs request permission to file a late response to
14 Defendants' motions because they believed they "had until March 30,
15 2009[,] to file any petition to the Supreme Court and did not recognize
16 the Motion to Dismiss might change that date." (Ct. Rec. [659](#).)
17 Defendants Bowen and Ballas object. Plaintiffs did not file a reply.
18 Because the Court is bound by the Ninth Circuit mandate, *Vizcaino v.*
19 *U.S. Dist. Ct. for the W. Dist. of Wash.*, 173 F.3d 713, 719 (9th Cir.
20 1999), and the Ninth Circuit docket does not reflect that Plaintiffs
21 have sought a stay pending the to-be-filed writ of certiorari, the Court
22 _____

23 ¹ Joseph Esposito is the bankruptcy trustee for Ivan Kriger and was
24 joined in this action on February 1, 2007. (Ct. Rec. [427](#).)

25 ² Because Defendant Lemons did not appeal the jury verdicts, the
26 Court will not modify the substance of the judgments in relation to
27 Defendant Lemons.

declines to grant Plaintiffs an extension of time to file an objection.

C. Defendants' Motions

Consistent with the Ninth Circuit's ruling, the Court orders modification of the judgments (Ct. Recs. [488](#) & [632](#)) as set forth below.³ The Court notes that it is modifying the prior attorney fees award for Christopher Grimes (Ct. Rec. [631](#)), finding that 100 hours (not 200 hours) is a reasonable number of hours for Mr. Grimes to have spent on litigating claims against Defendant Lemons. Accordingly, the previous \$25,000 attorneys fees award, which was downwardly adjusted under *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1995), is reduced to \$12,500.

In addition, the Court releases the funds previously deposited by Defendants Bowen and Ballas. The Court, however, denies Defendants Bowen and Ballas' request for costs (Ct. Rec. [658](#)) because Plaintiffs Kriger and Samolovov were proceeding *pro se* following Christopher Grimes' withdrawal until a legal aid clinic elected to assist them for trial and appeal purposes and their claims were not frivolous.

Accordingly, **IT IS HEREBY ORDERED:**

1. Plaintiffs' Motion to File Late Objection to Motion for Judgment of Dismissal (Ct. Rec. [659](#)) is **DENIED**.

2. Defendants Bowen and Ballas' Motion for Judgment of Dismissal Following Return of Mandate (Ct. Rec. [656](#)) is **GRANTED**.

3. Defendants Bowen and Ballas' Motion for Order Directing Clerk

³ Because Plaintiffs Natalya Prach and Anatoly Tsiribko settled with Defendants Bowen and Ballas post-trial, resulting in satisfaction of the judgments in full, the to-be-entered judgment will also not include these Plaintiffs recovering from Defendants Bowen and Ballas.

1 to Release Cash Bond Following Return of Mandate (Ct. Rec. [654](#)) is
2 **GRANTED.**

3 4. The prior Judgments (Ct. Recs. [488](#) & [632](#)) are **VACATED.**

4 5. An amended **Judgment** shall be entered as follows:

5 Judgment is entered in Defendants BOWEN and BALLAS' favor.
6 Further, judgment is entered in Plaintiffs' favor as to Defendant
7 KERRY LEMONS as follows:

8 a. Plaintiff NATALYA PRACH shall recover from Defendant
9 KERREY LEMONS the sum of \$3001.00 and her costs of
10 action, both with interest at the rate of 4.93% as
11 provided by 28 U.S.C. § 1961;

12 b. Plaintiff IVAN KRIGER/JOSEPH ESPOSITO shall recover from
13 Defendant KERREY LEMONS the sum of \$1.00 and his costs of
14 action, both with interest at the rate of 4.93% as
15 provided by 28 U.S.C. § 1961;

16 c. Plaintiff ANDREY SAMOLOVOV shall recover from Defendant
17 KERREY LEMONS the sum of \$1.00 and his costs of action,
18 both with interest at the rate of 4.93% as provided by 28
19 U.S.C. § 1961;

20 d. Plaintiff ANATOLIY TSIRIBKO shall recover from Defendant
21 KERREY LEMONS the sum of \$1.00 and his costs of action,
22 both with interest at the rate of 4.93% as provided by 28
23 U.S.C. § 1961; and

24 e. Plaintiffs Kriger, Samolovov, and Tsiribko shall recover
25 from Defendant KERRY LEMONS \$12,500.00 for Mr. Grimes'
26 attorney fees, plus costs.

